



**USAID**  
FROM THE AMERICAN PEOPLE

# THE WOMEN'S LEGAL RIGHTS INITIATIVE

**REPUBLIC OF MOZAMBIQUE  
MINISTRY OF JUSTICE  
BILL AGAINST TRAFFICKING IN PERSONS  
SEPTEMBER 2006**

This publication was produced for review by the United States Agency for International Development. It was prepared by Chemonics International in partnership with Centre for Development and Population Activities (CEDPA); Partners of the Americas; and MetaMetrics Inc.

# **THE WOMEN'S LEGAL RIGHTS INITIATIVE**

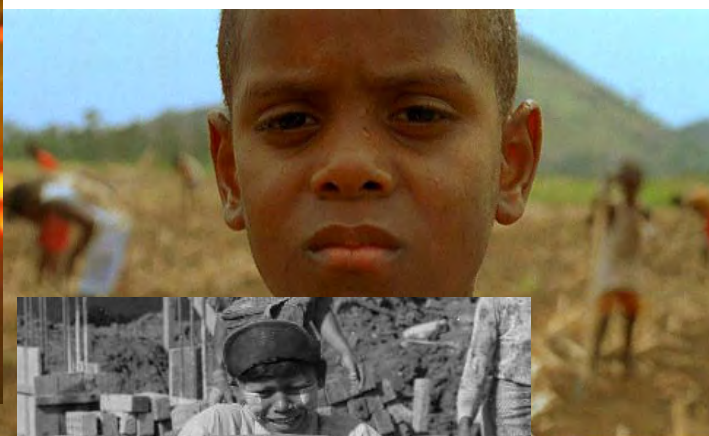
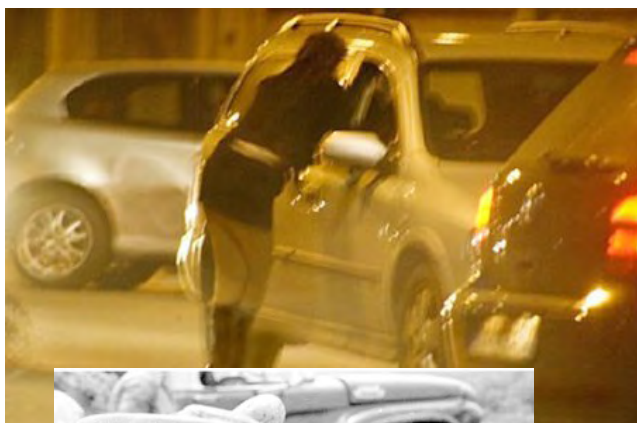
A Task Order Under the Women in Development IQC

Contract No. GEW-I-00-02-00016-00

The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.



**REPUBLIC OF MOZAMBIQUE  
MINISTRY OF JUSTICE**



**BILL AGAINST TRAFFICKING  
IN PERSONS**

**MAPUTO, SEPTEMBER 2006**

## CONTENTS

Introduction.....	Page 3
Background and Context	
<b>Section I</b>	
The Phenomenon of Trafficking in Persons.....	Page 4-6
<b>Section II</b>	
Trafficking, Gender and Prostitution .....	Page 7- 8
<b>Section III</b>	
Legal Framework	
1. The Constitution of the Republic.....	Page 9-10
2. International Conventions.....	Page 11
3. Criminal Law .....	Page 11-17
4. Legislation on foreigners .....	Page 17-18
<b>Section IV</b>	
5. Comparative Law.....	Page 18-19
6. Conclusions and Recommendations.....	Page 19
<b>Section VI</b>	
Bill on Crimes Against Trafficking in Persons.....	Page 20-26

# **LAW AGAINST THE TRAFFICKING IN PERSONS**

## **Introduction**

### **Background and Context**

In the second half of the 20<sup>th</sup> century the history of Mozambique was very much characterized by violence and social insecurity. Mozambique achieved its National Independence after ten years of armed liberation struggle. Soon after Independence the country suffered the aggression from former Southern Rhodesia and was subsequently victim of a destabilization war which ended in 1992, after about sixteen years of armed conflict, with the signing of the General Peace Agreement between the Government and Renamo.

As a consequence, the impact of the war together with poverty and frequent natural disasters seriously affected the social fabric.

In the last few years, the country's political stability and rapid economic growth, resulting from the development strategies adopted by the Government, produced significant results in the country and consequently in the proportion of people living in a situation of absolute poverty, which decreased from 69% in 1997 to 54% in 2003.

Notable progress was also achieved with a view to achieve the Millennium Development Goals, particularly regarding access to basic education and primary health care, among other basic social services, for the improvement of the living conditions of the population and the families.

In spite of the progress achieved, food insecurity, the growing impact of HIV/AIDS and natural disasters continue being important challenges to the country's development, threatening, de facto, to reverse the gains of the last few years in social development terms.

The impoverishment of the families together with the degradation of socio-cultural values bring about phenomena that offend human dignity, such as violence, and in the last few years an upsurge of cases of trafficking / sale of human beings has occurred.

## SECTION I

### 1. THE PHENOMENON OF TRAFFICKING IN PERSONS

In conformity with paragraph a) of article 3 of the Additional Protocol to the United Nations Convention Against Transnational Organized Crime regarding the Prevention, Repression and Punishment of Trafficking in Persons, ratified by the country through Resolution 87/2002 of 11 December of the Council of Ministers, trafficking in human beings shall mean “the recruitment, transportation, transfer, harbouring or receipt in persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.

The phenomenon of trafficking in persons is not a recent one. For many years humanity has known records of trafficking in persons for the purpose of forced labour, sexual exploitation and child labour.

Thus, at the beginning of the 20<sup>th</sup> century the concept of trafficking related to the trafficking of European women appears for the first time in international law as a result of the consciousness-raising of the western world.

Many developed countries engaged in the “importation” of people that were employed in building their cities and infrastructures.

Somehow this importation was always facilitated, on the one hand by the governments of the time and, on the other hand, by the victims’ need to seek better living conditions.

In the last few years, the trafficking in persons related to criminal organizations, or to a chain of transnational intermediaries, has been observed.

Research done on trafficking in the South of the country concludes that Mozambique is one of the countries in Africa where trafficking is intense<sup>1</sup>.

In the context of Mozambique, people, mainly youth, motivated by their socio-economic difficulties see in other countries, mainly of the region, the solution to their problems, and accept proposals of criminal agents.

The search for their “dream” makes people “vulnerable” to trafficking and they are often taken by people to whom they pay for transporting them abroad and then put to work in precarious conditions. For the most part the women and girls involved are transported abroad and sexually exploited.

---

<sup>1</sup> Serra, Carlos. *Tatá papá, tatá mamã*, Tráfico de pessoas em Moçambique, Imprensa Universitária, 2006

A study done by the South African Molo Songololo Foundation shows that children and young women of Mozambican nationality are taken to South Africa with promises of employment on farms, ending up falling into the traps of prostitution.<sup>2</sup>

Excerpts of testimony given by youth transported to South Africa<sup>3</sup> confirm the results published by the study.

Although the size of the problem in Mozambique is not known, there is information of the existence of several cases of trafficking in persons, mainly women and children.

In the last few years the media have very frequently reported the occurrence of cases of abduction of women and children, similar to what was said above, as well as of the extraction of human organs, occurring a bit all over the country.<sup>4</sup>

In an article published in the Notícias paper<sup>5</sup> it is mentioned that “The police arrested five people, among which two women, accused of the abduction of three children aged between 9 and 12 years, purportedly to be sold to an intermediary, who would take them to a unidentified buyer from South Africa. According to the police of Maputo Province, the children had been abducted in the Santos market area, in Matola town, by an individual who travelled in a Mercedes and who also lived there. The children would have been seduced with sweets to enter into the car. The kidnapper would have confessed that he stole the car of his boss to transport the minors, which he then would hand over to an intermediary that would be waiting for him.”

This is a phenomenon observed both within the country, i.e., from one point of the country to another one, and at international level, namely, from a point of the country to any point of foreign countries. Mozambique is one of the countries in which the trafficking in persons originates.

The available information shows that the persons victim of trafficking are seduced by people they know, who take them to neighbouring countries, mainly South Africa. Upon arrival at their destination, they are sheltered in houses where they are deprived of their liberty and afterwards sold for the purpose of using their working power in exchange for ridiculous wages or for sexual exploitation.

Usually, the victims are not aware of being victims of trafficking and only become aware when they find themselves without any rights to oppose themselves, without liberty and living under physical and psychological abuse.

---

<sup>2</sup> SNGOOLLO, Molo. The trafficking of Children for Purpose of Sexual Exploration - South Africa, Cape Town, 2000, p.42.

<sup>3</sup> Television programme, Televisão de Moçambique, as part of the Telejornal, in May of the current year, 10/07/06; 3/08/06; 2/09/06.

<sup>4</sup> Reports in several media (between 2001 and 2005), compiled in Carlos Serra's book.

<sup>5</sup> In the Notícias paper of 2002 (5/03/02), Page 7

On the other hand, there are indications that the country has been used as a transit point in the trafficking route to South Africa. Facts such as the detention of 21 Pakistanis in Nampula Province, who were found with false visa after having violated the border between Mozambique and Malawi and more than 10 Somali citizens having been caught in a bus in Xai-Xai, without documents. So, these examples hint at the fact that Mozambique may be a transit country of trafficked persons on their way to South Africa

The studies done show that the trafficking cases in Mozambique are being reported very timidly by the population. However, it is generally felt that this practice does exist and should be fought.

The phenomenon is also a concern of several countries in the world, which led to the adoption of the United Nations Convention Against Transnational Organized Crime and the Additional Protocol to Prevent, Repress and Punish Trafficking in Persons, especially Women and Children, ratified by our country through Resolution 87/2002 of 11 December.

With the signing and ratification of these instruments, the State commits itself to take legislative measures and other actions at national level to render the commitments undertaken effective.

It is therefore very necessary that the State take concrete actions to suppress acts of abduction and extraction of human organs.

For this purpose a multidisciplinary group of consultants was created for the preparation and presentation of a Bill Against Trafficking in Persons.

## 2 – WORK PHASES

The job, planned for a period of four (4) months, has been divided into four (4) phases

Phase 1 – Material collection and analysis, including a bibliographical study, interviews and consultations with community groups and civil society organizations, collection of information on social practice in the various regions of the country, analysis of the legislation in force and comparative studies of the regulation of this issue in other legal systems.

Phase 2 – Seminar with experts from the Republic of South Africa, Rede Came and representatives of civil society;

Phase 3 – Regional seminars with civil society communities and organizations for the presentation of the first draft;

Phase 4 - Presentation of the final document



This document is made up of an introduction and two parts. The first part contains the background, context and justification and the second part the bill.

In addition to the introduction, the first part includes four sections. In the **first** section the phenomenon of trafficking in persons is presented – the local and the international panorama, in which the concrete situation of Mozambique is pointed out, including a few specific cases. The **second** section, entitled Trafficking, Gender and Prostitution, deals with the issues of gender relations and socio-cultural aspects that contribute to the phenomenon of trafficking in persons. In the **third** section the constitutional principles regarding the protection of human dignity, and thus relevant in relation to the issue of trafficking in persons, are presented. In the **fourth** section the International Conventions with relevance to the issue of trafficking in persons are presented, and an analysis is made of the obligations following from the ratification of these instruments. In the **fifth** section an analysis is made of the criminal legislation referring to crimes against persons and the way in which the issue now being presented in this bill is dealt with is described. In the **sixth** section, a brief summary of how the issue of trafficking in persons is dealt with in a few other countries of the region is presented, in terms of comparative law. And finally, in the **seventh** section the conclusions and recommendations are presented.

## **SECTION II**

### **TRAFFICKING, GENDER AND PROSTITUTIONS**

There is a close connection between trafficking, gender and prostitution, so that the issue of trafficking in persons should also be analysed in a gender perspective.

In this section we intend to analyse the phenomenon of prostitution in the scope of trafficking in persons, though we do not present here a bill to fight prostitution.

#### **Gender**

Data obtained by the studies and most of the cases reported in the media lead to the conclusion that the majority of people who are object of trafficking for sexual exploitation are women. This fact is clearly recognised by the protocol against trafficking which places special emphasis on women and children. Gender inequality is one of the underlying reasons for sexual exploitation of women. Tradition, customs and habits, and dominant socio-cultural values that place women in society in an inferior position relative to men, are some of the causes of gender inequality. The result of the cultural notion of the supremacy and authority of men is that many men expect obedience and submission on the part of women, in all aspects of daily life, including sexual life.

Another fact that facilitates the abuse of women is the socio-economic situation and cultural factors that increase gender inequalities and discrimination, resulting in an increasing vulnerability of women and children to trafficking. In fact, women and children are by and large socially and economically more underprivileged. The scarce

employment and schooling opportunities in the country contribute to them (women and children) being object of trafficking, mainly abroad.

From a socio-cultural point of view there is the conviction that the integration of minors close by other people, relatives or not, contributes to a better preparation for life.

Due to the power relations and with the argument that child labour is part of the children's education, minors are also object of ill treatment which contributes to them becoming easy victims of trafficking, in the expectation of better living conditions.

From a socio-economic point of view, and considering the poverty levels of the majority of the population, minors represent a financial burden which is difficult to sustain and the sale of children or of other relatives appears as a way of survival.

Both prostitution and trafficking are part of the system of domination rooted in the gender relations and their source lays in the power inequality between men and women in society.

In Mozambique there is not much legislative development regarding the phenomenon of prostitution. However, one should always distinguish between isolated prostitution and prostitution in the scope of trafficking, and trafficking for sexual exploitation should be prosecuted criminally.

## **SECTION II**

### **LEGAL FRAMEWORK**

#### **1. THE CONSTITUTION OF THE REPUBLIC OF MOZAMBIQUE**

The Constitution of the Republic stays on top of the Mozambican Legal System. The Constitution is the “mother” Law which defines the guiding pillars of the State.

As a consequence, the subordinate laws should always be in conformity with the principles laid down in the Constitution, under the penalty of being declared constitutionally invalid.

From the general provisions of the Constitution (Article 11) stands out that “the fundamental aims of the Republic of Mozambique are:

(...)

c) the building of a society of social justice and the achievement of material and spiritual well-being and quality of life for its citizens;

(...)

e) the defence and promotion of human rights and the equality of citizens before the law;”

Closely related to the protection of human rights is the protection of the right to life.

The right to life is a right of high dignity. The affirmation of the right to life protects a legal interest that is situated above the other rights.

Thus, paragraph a) of Article 40 of the Constitution stipulates that:

1. All citizens shall have the right to life and to physical and moral integrity and may not be subjected to torture or to cruel or inhuman treatment.

The practice of trafficking in persons is doubtless a degrading practice, offending human dignity, considering that the victims are object of ill treatment, forced labour and sexual abuse.

The right to life is particularly put into question considering the HIV/AIDS pandemic, due to unprotected sexual relations and with different partners to which the women are almost always subjected in the countries of destination.

On the other hand, as work is a right which dignifies men, the Constitution lays down the principle of free choice of profession, stipulating that forced labour is prohibited.

Thus, forced labour and sexual exploitation to which the victims of trafficking are subjected constitute a frontal violation of the Constitutional principle.

Relative to children, the Constitution stipulates especially:

Article 47

- 1- Children have the right to protection and the necessary care for their well-being;
- 2- (.....)
- 3- All acts relative to children, practiced by public entities or by private institutions, mainly take into account the their highest interests.  
(principle of child protection)

As a corollary of the protection of the child, the Constitution lays down the principle that “the family shall be responsible for raising children in a harmonious manner....; the family and the State shall ensure that children receive a comprehensive education, bringing them up in the values of national unity, love for their country, equality between men and women, social respect and solidarity; Fathers and mothers shall take care of their children within and outside matrimony”. (Article 120)

Article 121 stipulates:

- 1- “All children have the right to protection from the family, society and the State, with a view to their full development.
- 2- All children, particularly orphans, disabled and abandoned children, enjoy protection from the family, society and the State against any form of discrimination, ill treatment and the abusive exercise of authority in the family and in other institutions.
- 3- Children may not be discriminated against, namely on grounds of their birth, nor subjected to ill treatment;
- 4- Child labour is prohibited, whether of compulsory schooling age or of any other age”.

The principle of the right of children to protection from the family, society and the State, with a view to their full development, laid down in the constitutional provisions quoted, should thus be materialized, which not only but also happens through the preparation of laws that incriminate acts which make an attempt to the rights and well-being of children.

On the other hand, from the Constitution also follow important guiding principles of criminal law. In the first place the classification principle according to which an act may only be qualified as being criminal if considered as such by the penal law, which equals the Latin expression “*nullum crimen sine lege*”.

This results from the provision of Article 60 of the Constitution. “No one may be punished for an act that was not considered a crime at the time it was committed.”

From this principle it follows that if somebody commits an act that is not classified by law as a crime, there cannot be any criminal responsibility.

As a consequence, because criminal law does not classify specifically trafficking in persons as a crime, an agent who practices such an act cannot be held criminally responsible.

Besides, the imprisonment or detention of a person accused or suspected of the crime of trafficking in persons would be an act that violates what is laid down in the Constitution, subject to a sanction under the law, as stipulated in Article 38.

It is important to mention that Article 70 of the Constitution affirms the right of citizen to resort to the courts against acts that violate their rights and interests recognised by law.

Faced with a situation of trafficking in persons, the interested persons may resort to the courts demanding criminal liability of the person who committed the act.

However, the perpetrator will be punished for the practice of the various acts defined in the penal law which are part of the behaviour of the agent, but not for the crime of trafficking in persons, which is not classified in the Penal Code or in any other law.

Still by force of the Constitution, and in the scope of international relations, Article 18 stipulates:

#### International law

1. The treaties and international agreements, validly approved and ratified, enter into force in the Mozambican legal system after their official publication and as long as they internationally bind the Mozambican State.
2. The norms of international law have in the national legal system the same value as the normative infra-constitutional acts emanated from the Assembly of the Republic and from Government, in accordance with their respective way of reception.

#### Article 43 – Interpretation of fundamental rights

The constitutional clauses relative to the fundamental rights are interpreted and integrated in accordance with the Universal Declaration of Human Rights and the African Charter of Human and Peoples’ Rights.

From a combined interpretation of the constitutional provisions and international conventions arises the need to adopt rules that explicitly and adequately punish the crime of trafficking in persons, particularly women and children.

## **SECTION IV**

### **1. INTERNATIONAL CONVENTIONS**

In this section we deal with the treatment of the phenomenon of trafficking in persons in international law.

It is important to point out that trafficking in human beings constitutes a concern of the international community.

In this context, and for being relevant to the issue of the protection of fundamental rights of people, it is important to refer to the following conventions:

1. United Nations Convention on the Rights of the Child
2. African Charter on the Rights and Welfare of the Child
3. Optional Protocol to the United Nations Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography
4. Additional Protocol to the United Nations Convention Against Transnational Organized Crime relative to the Prevention, Repression and Punishment of Trafficking in Persons, especially Women and Children
5. International Labour Organization (ILO) Convention on the protection of minors, the provisions of which require the passing of a law which regulates the issues the convention raises, for becoming effective in the national legal system.

## **SECTION V**

### **2. CRIMINAL LAW**

In this section we will present the legal types of crime provided for in the penal law in force and which may come close to the crime of trafficking in persons.

A fundamental principle of the criminal law in force is the principle of legality defined in Article 1 of the Penal Code, which can also be translated into the classification principle provided for in Article 5 of the Penal Code, “ *Nullum crimen sine lege* ” according to which no fact, either consisting of an action or an omission, can be considered criminal, if not qualified as such by a law already in force.

It should be added that another principle of relevant importance in the scope of criminal law is the principle of non-application of the extensive interpretation and of non-integration by analogy of the criminal law. (Article 18 of the Penal Code). From these

principles, it follows on the one hand that a given norm cannot be applied by extension to behaviours that are not restrictedly provided for in the penal law. On the other hand that in no case whatsoever the criminal law can be applied taking into account the similarities existing between a certain behaviour and another one qualified by the penal law as a crime.

According to the concept adopted by the United Nations, the trafficking in human beings comprises “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”

From the definition adopted by the United Nations one concludes that there are three constitutive elements of the crime of trafficking in persons, namely:

- a) The acts of recruitment, transportation, transfer, harbouring or receipt;
- b) The means of threat or use of force or other forms of coercion, of abduction, of fraud, of seduction or abuse of authorities, or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person;
- c) For the purpose of exploitation.

The constitutive elements of the crime above identified are of particular importance, because it is from them that one distinguishes the crime of trafficking in persons from other crimes.

From an analysis of this concept one concludes that trafficking in persons falls within the crimes against persons. From this large group we will now point out and analyse a few legal types that may be confused with or approximate the crime of trafficking in persons.

## **Crimes against persons**

### **Article 328**

#### **Crimes against the liberty of persons**

All those who subject a free man to imprisonment shall be sentenced to a two to eight year long-term imprisonment and to the maximum fine.

The subjection of a free man to imprisonment should not be confused with the crime of trafficking in persons, as it does not presuppose the recruitment or any other action or means provided for for the crime of trafficking in persons.

### **Article 330**

#### **Private imprisonment**

Any private individual who practices private imprisonment, retaining, on his own behalf or of a third party, up to twenty-four hours, somebody as a captive in any house or other place where he or she is retained and kept in such a way that he or she does not enjoy full liberty, if he or she has no imprisonment, will be sentenced to an imprisonment of one month to one year.

§ 1. A simple retention for a shorter time is considered a physical offence, and punished in conformity with the rules of the law in such cases.

§ 2. If the retention lasts for more than twenty-four hours, the criminal will be sentenced to three months to two years imprisonment.

§ 3. If the criminal releases the captive within three days, without having achieved any of the objects he had in mind with the retention, and before the start of any proceedings against him, the punishment will be lightened.

§ 4. However, if the retention lasts for more than twenty days, the punishment will be a two to eight year long-term prison sentence and the maximum fine.

The constitutive elements of the crime of private imprisonment are the retention of somebody as a captive, in a closed house or another place, for a period of over 24 hours. The means and purposes of the agent do not influence the existence of the crime. These elements are completely different from those of the crime of trafficking, so that the two types of crime should not be confused.

### **Article 331**

#### **Special aggravation of the crime of private imprisonment**

In any of the cases in which the crime of private imprisonment occurs, the punishment will be a two to eight year long-term prison sentence and the maximum fine, with the existence of some of the following conditions:

1° If the criminal commits the crime, simulating in any way public authority.

2° If during the crime there were threats of death, of torture or of any other physical offence, which do not correspond to a heavier punishment.

This provision may inspire the regulation of cases of special aggravation, in the crime of trafficking in persons.

### **Article 332**

#### **Non-liberation and hiding of the victim**

If the person who committed the crime of private imprisonment does not show that he released the victim, or where he or she is, he will be sentenced to a sixteen to twenty year long-term imprisonment.

### **Article 342**

#### **Violent or fraudulent removal of a minor less than seven year old**

A person who takes, or orders to take, by violent or fraudulent means, a minor of less than seven years from the house or the place in which he or she is, with authorisation of the people in charge of his or her keeping or guidance, will be sentenced to a two to eight year long-term imprisonment.

The crime of removal and hiding of a minor has some affinities with the crime of trafficking in persons, particularly of minors. There is the element of taking the minor from the house or place where he or she is, which implies movement. There are the means, fraud or violence, with authorisation of the people in charge of his or her keeping, but the element of the purpose of the removal of this minor is lacking, so that it should also not be confused with the crime of trafficking in persons.

### **Article 343**

#### **Coercion of a minor to abandon the house of the parents or guardians**

A person who forces through violence or persuades through fraud a minor of less than **twenty years** to abandon the house of the parents or guardians, or of those who are in charge of him or her, or to abandon the place in which he or she has been told to be, or takes him or her away, will be sentenced to imprisonment, without prejudice to the heavier punishment for private imprisonment, if this is the case.

Sole §. If the minor is younger than 17 years the punishment will be the maximum imprisonment.

The same can be said in respect of the crime provided for in Article 343 of the Penal Code. As the element of removing and the means of violence and fraud, irrespective of the purpose, are present, the crime of coercion of a minor to abandon the house of the parents or guardians is committed.

### **Article 344**

#### **Hiding, exchange and disappearance of minors**

A person who hides or orders the hiding, or exchanges or orders to exchange, or lets or orders to disappear a minor of less than 7 years, will be sentenced to a two to eight year long-term imprisonment.

§ 1 If the minor is older than 7 years and younger than 18 years, the offender will be sentenced to a two to eight year long-term imprisonment, without prejudice to the heavier punishments for private imprisonment, if this is the case.

§ 2 In all cases announced in this section until here, he who does not show the whereabouts of the minor will be sentenced to a sixteen to twenty year long-term imprisonment.

§ 3 A person who is in charge of the minor and does not present him or her to those who have the right to reclaim him or her back, neither justifies his or her disappearance, will be sentenced to a two to eight year long-term imprisonment, except if he falls under the provision of the article.

The crime of hiding, exchange and disappearance of minors should not be confused with trafficking in persons. Important constitutive elements of the crime are the hiding, or ordering the hiding, the exchange, ordering the exchange or making disappear a minor of less than seven years. The aim of the norm is to protect the minor, guarantee the security



of the minor against the threat of his or her disappearance, and does not fully cover the legal interest that is intended to be protected by the incrimination of trafficking in persons.

#### **Article 345**

##### **Exposure and abandonment of an infant**

A person who exposes or abandons a minor of less than 7 years in any place which is not a public establishment, meant for the reception of the exposed, will be sentenced to imprisonment and corresponding fine.

§ 1 If the exposure or abandonment is in a deserted place, he or she will be sentenced to a two to eight year long-term imprisonment.

§ 2 If this crime is committed by the legitimate father or mother, or by a guardian or a person in charge of the keeping or education of the minor, the punishment will be aggravated with the maximum fine.

§3 If the exposure or abandonment leads to putting in danger the life of the minor, or if it resulted in injury or death, the punishment will be an eight year long-term prison sentence.

Constitutive elements of the crime of exposure and abandonment of an infant are the exposure or abandonment of a minor of less than 7 years in a place which is not a public establishment, meant for the reception of the exposed. It does not come close to the crime of trafficking in persons. In the exposure, the abandonment itself is the objective of the criminal act, while in the crime of trafficking the objective is exploitation in its various ways.

#### **Article 347**

##### **Illegitimate handing over of a minor of less than 7 years**

A person who, being in charge of raising or educating a minor of less than 7 years, hands him or her over to a public establishment, or to another person, without the permission of the person who entrusted the minor to him or of the competent authority, will be sentenced to one month to one year imprisonment and corresponding fine.

What the law aims at punishing in the crime of illegal handing over of a minor of less than 7 years is the act of **handing over** to a public establishment or to another person, **of a minor of less than seven years, without the permission of the person who entrusted the minor to him** or of the competent authority. This should thus not be confused with the acts of recruitment, transport, or harbouring by means of force, deceit, etc., for the **purpose of exploitation**, which are essential elements of the crime of trafficking in persons.

#### **Crimes against the security of persons**

#### **Article 392**

##### **Rape**

A person who by means of seduction, rapes a virgin woman, older than twelve and younger than eighteen years, will be punished with a two to eight year long-term prison sentence.

### **Article 393**

#### **Violation**

A person who has illegal sexual intercourse with any woman, against her will, by means of physical violence, violent intimidation or any fraud, which do not constitute seduction, or finding the woman deprived of the use of her reason or senses, commits the crime of violation, will be sentenced to two to eight year long-term imprisonment.

### **Article 394**

#### **Violation of a minor of less than twelve years**

A person who violates a minor of less than twelve years, given that none of the circumstances described in the previous article is found to be present, will be sentenced to eight to twelve year long-term imprisonment.

The crime of rape is very different from trafficking in persons. However, the crime of rape may go together with trafficking in persons. The same can be said regarding the crime of violation.

### **Article 395**

#### **Violent or fraudulent abduction**

The abduction of any woman with a dishonest objective, by means of physical violence, violent intimidation or any fraud, which do not constitute seduction, or finding the woman deprived of the use of her reason or senses, will be punished as an attempt to decency with violence, if no rape or violation was committed; and will be considered as an aggravating circumstance of the crime committed.

Constitutive elements of the crime are: the detention and dislocation of the woman from one place to another with a dishonest objective, by means of physical violence, violent intimidation or any fraud which does not constitute seduction.

The crime of violent or fraudulent abduction presents some affinities with the crime of trafficking in persons, but is different in at least two aspects: The crime of abduction is only in relation to women while the crime of trafficking in persons is in respect of all persons. Men are object of trafficking in persons, for the purpose of work or forced labour as well as for the extraction of human organs.

### **Article 396**

#### **Abduction with consent**

As aggravating circumstance of rape will be considered the abduction of any virgin woman, older than 12 years and younger than 18 years, from her home or place where she is with proper authorisation, committed with her consent. However, if rape does not occur, punishment will be for abduction through seduction, with imprisonment up to one year.

The crime of abduction with consent is of particular interest in the distinction between the crime of trafficking in persons and other crimes, in virtue of bringing consent as an element to be taken into consideration in the qualification of the crime. In the case of a crime of trafficking in persons the consent of the victim is irrelevant, for any age, as results from Article 3, paragraph b) of the United Nations Definition.

## **Article 398**

### **Special aggravation**

In the crimes with which this section deals, the punishments will be replaced by those immediately higher, if the criminal is:

1. Parent or grandparent or brother of the offended person;
2. If he is guardian or teacher of this person, or if he due to his position has any authority over the victim; or if he is in charge of his or her education, guidance or keeping; or if he is a clergyman or minister of any cult, or a public servant from whose function depends the business or pretensions of the offended person.
3. If he is a servant or a domestic of the offended person or of his or her family, or if he for professional reasons, which require a title, has influence over the offended person;
4. If he has transmitted syphilis or another venereal disease to the offended person.

The special aggravation should constitute an inspiration for the definition of the aggravating circumstances in the cases of crime of trafficking in persons.

## **Article 399**

### **Previous charge**

In the crimes provided for in the foregoing articles there will be no criminal proceedings without a previous charge of the victim, or of her parents, grandparents, husband, brothers or guardians, except in the following cases:

1. - If the offended person is younger than twelve years;
2. -If any violence was used, qualified by law as a crime, the accusation of which does not depend on the charge or the accusation of the party;
3. - If the person is wretched or if he is entrusted to a welfare establishment.

Sole § - After the complaint has been lodged and the criminal proceedings started, the pardon or desistance of the party does not suspend the criminal proceedings.

Contrary to the crimes dealt with above, the crime of trafficking in persons should assume a public nature, considering the extent of the protected rights and interests. The law should allow that the Public Prosecutor or any person who has knowledge of the fact, may lay charges and bring an action against the perpetrators of the crime.

## **3. LEGISLATION ON FOREIGNERS**

The entry, stay and departure from the country of foreign citizens is governed by Law 5/93 of 28 December. Subsection 1 of Article 5 of this Law stipulates that entry into the country should be done through the official border points set up to this effect.

Article 6 defines the documents required for a foreign citizen to enter the country, which in short are a valid passport or equivalent document and an entry visa.

It is important to mention here that trafficking should not be confused with the “smuggling” of people, i.e., cases of illegal migration or situations in which somebody facilitates the entry of a foreigner.

Trafficking involves a continuous exploitation of the victim, while smuggling or disappearance intends to facilitate the illegal introduction or departure of a person who is not a citizen of a certain country or who does not have a permanent residence there.

The person who facilitates the illegal entry is normally paid at the time of the agreement between the smuggler and the smuggled person and in general the involvement between the two ends soon after the illegal entry into the country of destination has materialized. The intention of the smuggler is not any form of exploitation of his client. However, once his client is in the country of destination, the smuggler may compel him or her to forced labour or sexual exploitation.

## **SECTION VI**

### **COMPARATIVE LAW**

Some countries have already taken measures for the prevention and fight against trafficking in persons. As a comparative study, and because of the profound affinities existing between the respective legal systems of the countries, we bring the experience of Portugal and Brazil regarding the trafficking in human beings. We will also resort to a few countries of the region so as to understand how the phenomenon is dealt with legally in those countries, namely in neighbouring South Africa and Malawi.

Portugal, although it is felt that it does not properly punish the crime, has a Law to fight trafficking in persons. It should also be observed that the law only provides for trafficking for prostitution, disregarding trafficking for labour exploitation.

Faced with these observations, there are publications and institutional involvement in the discussion for a revision of the Law in force.

In Brazil, trafficking in persons is punished by Law, but the fact that the law is limited to the punishment of international trafficking is being questioned. The law is also being criticised as it only provides for trafficking for prostitution and does not classify trafficking for other purposes. In the last few years the phenomenon of trafficking in human beings has been object of a lot of discussions which led to a proposal to revise the law. In this context an amendment was introduced according to which local trafficking in persons subject to the rules applicable to trafficking in persons was criminalized and a few aggravating circumstances of the crime were added.<sup>6</sup>

In addition to the existence of laws that punish specifically the trafficking in human beings, Portugal and Brazil have ongoing projects for the prevention and fight against trafficking in persons, as well as programmes for the protection of the victims.

---

<sup>6</sup> in [http://www.planalto.gov.br/ccivil\\_Ato2004-2006/2005/Lei/L11106.htm](http://www.planalto.gov.br/ccivil_Ato2004-2006/2005/Lei/L11106.htm)

South Africa is in an advanced stage of preparing a Law for the prevention and fight against trafficking in persons.

Malawi devotes a section on the trafficking of minors in the Law for the protection of the child, which is still in the process of preparation.

In order to achieve results in the fight against the crime of trafficking, the various countries should take harmonized measures.

## **SECTION VII**

### **CONCLUSIONS AND RECOMMENDATIONS**

The studies done show that in various parts of the country the practice of trafficking in persons exists, for purposes of forced labour or services, sexual exploitation, child labour and also the extraction of human organs for magical purposes.

There are a lot of difficulties in reporting these practices to the authorities, often because those who know the facts fear retaliations.

There is a lack of legislation to criminalize specifically the practice of trafficking in persons, and the perpetrators of this practice can only be held liable for the various legal types of crime, considering the various acts committed by the agent. Thus, sometimes many of the collaborators, namely those who transport, lodge and employ the victims of trafficking in persons, remain unpunished.

As the practice of trafficking in persons tends to involve an organization of criminals within the country and abroad, particularly international trafficking, there is an urgent need for the countries to take harmonized measures so as to repress and prevent these practices.

Considering the obligations assumed by the Mozambican State with the ratification of the international conventions already referred to, particularly the United Nations Convention Against Transnational Organized Crime and the Additional Protocol Relative to the Prevention, Repression and Punishment of Trafficking in Persons, especially Women and Children.

There is, thus, a need to adopt a law which regulates specifically the crime of trafficking in persons.

## **Bill on crimes against trafficking in persons**

### **PREAMBLE**

The Constitution of the Republic of Mozambique proclaims the right to life, to physical integrity, to the prohibition of cruel or inhuman treatment, the right to free choice of work and the right of non-privation of liberty, unless in cases provided for in the law.

The Mozambican State ratified important United Nations Conventions and their respective protocols, which recommend the member countries to adopt legislative measures for the prevention and fight against trafficking in persons, aimed at preventing and repressing slavery, trafficking in persons and their sexual or work exploitation or for the extraction of human organs.

The Criminal Code in force does not specifically and adequately regulate the issue of trafficking in persons, so that its readjustment to the Constitution of the Republic of Mozambique and to the Conventions and respective Protocols referred to is necessary.

In addition, there is a growing number of victims of this phenomenon, which cannot be adequately dealt with without a specific legislation.

**Accordingly, under subsection 1 of Article 179 of the Constitution, the Assembly of the Republic determines:**

### **SECTION I (General principles)**

#### **Article 1 (Definition of trafficking in persons)**

For the purpose of this law, trafficking in persons shall mean the use of violence, serious threat, tricks, fraudulent manoeuvres, abuse of authority resulting from a relation of hierarchical, economic or labour dependence, or the abuse of any situation of vulnerability, abandonment or need, seduce, transport, proceed to lodging or sheltering the person or prepare the conditions for the practice by this person of prostitution or of sexual acts of any nature<sup>7</sup>, forced labour, servitude, slavery, begging or for the extraction of human organs.

---

<sup>7</sup> With the expression “sexual acts of any nature” we want to include the participation in photographs, pornographic films, live sexual performances, striptease, table dance and others. The concept of crime of trafficking here presented is in conformity with the definition adopted according to article 3 and 5 paragraph c) of the United Nations Protocol.

## **Article 2 (Scope)**

Any person who practices acts or omissions, mentioned in the preceding article, which directly or indirectly contribute to having any benefit from this activity, in Mozambique or abroad, commits the crime of trafficking in persons.

## **Article 3 (Criminal responsibility of collective persons and societies)**

1. Collective persons are jointly responsible for the payment of compensations arising from the criminal acts committed by their managers.
2. The property of the collective persons used in the practice of this crime, whether it consists of transport, accommodation or financial means, or regarding means of another nature, will be confiscated and lost in favour of the State.
3. The permits, shares and licences of the collective persons and societies which commit this crime, will be confiscated and the activity terminated.
4. The societies, even if constituted irregularly, are equally responsible, under this law.

## **Article 4 (Desistance of the execution of the crime)**

Any person who participates in preparatory acts for the execution of a crime provided for in this law and denounces or reveals it to the police authorities, the public prosecutor or judicial authorities, before the start of the execution or in time to avoid its consequences, may benefit from special attenuation of his criminal responsibility or from the exemption of punishment.

## **Article 5 (Punishment of the attempt and of complicity)**

1. The attempt to practice the crimes provided for in this law is always punishable, under the general conditions of criminal law.
2. The accomplices of the practice of the crime of trafficking in persons are equally punished, under the general conditions of law<sup>8</sup>.

---

<sup>8</sup> This provision is in conformity with article 5 of the Protocol...

## **Article 6**

### **(Effects of the punishments)**

The punishments imposed relative to the offences provided for in this law result in the following effects:

1. Loss in favour of the State of the instruments of the crime.
2. Seizure and cancellation of the authorisations issued on behalf of the agent of the offence.
3. Interdiction of new activities which by their nature may facilitate trafficking.
4. Obligation of compensation of the victim and repair of the harm caused.

## **Article 7**

### **(Criteria for the determination of punishments)**

For the determination of the concrete measure of the prison sentences, within the limits established in the law, the offender's level of crime, the seriousness of the criminal act, the relation between the offender and the victim, the motives for the offence and its results, the criminal background of the agent and the reparable or irreparable character of the harm caused will be taken into consideration.

## **Article 8**

### **(Aggravating circumstances)**

Aggravating circumstances of the criminal responsibility of the offender are:

- a) The trafficking is committed by a relative of the victim, of any degree in the direct line or a relative in the collateral line up to the 6<sup>th</sup> degree<sup>9</sup>.
- b) The crime is committed by a guardian or teacher of the victim, or by any person with authority over him or her, or by the person in charge of his or her education, guidance or keeping; or by a clergyman or minister of any cult, or a public servant from whose function depends the business or pretensions of the offended person.
- c) The crime is committed by whom has the obligation of not committing it, especially because of his or her profession;
- d) The crime is committed against an interdiction or a disabled person.

## **Article 9**

### **(Attenuating circumstances)**

Attenuating circumstances of the criminal responsibility of the offender are, among others, the spontaneous confession of the offence, his or her

---

<sup>9</sup> The basis of the degree of affinity here considered are the limits of the effects of affinity established in the Family Law, Law 10/2004 of 25 August, Article ( )



collaboration with the competent authorities for clarifying the fact and the voluntary repair of the harm caused.

### **Article 10 (Disobedience)**

The refusal by the offender of identification, search or any act tending to prevent or obstruct the activity of the competent authorities, in the act of interpellation constitutes a crime of disobedience, punishable under the penal legislation.

### **Article 11 (Penal action)**

Penal action emanating from the crimes provided for in this law is public, and does not depend on the complaint, denouncement or communication of the victims or their representatives, the criminal proceedings.

## **SECTION II (Crimes of trafficking in persons)**

### **Article 12 (Crime of trafficking in persons)**

1. The trafficking of any person for the purpose of sexual, work or any other kind of exploitation is punished with a 2 to 8 year long-term prison sentence.
2. The trafficking for the purpose of the extraction of human organs, for any purpose, is punished with a 12 to 16 year long-term prison sentence.
3. If the trafficking results in the death of the victim, the general rules for the punishment of manslaughter apply<sup>10</sup>.

### **Article 13 (Trafficking in minors younger than 18 years)**

---

<sup>10</sup> In this provision the intention to commit the crime was emphasized, to be in conformity with number 1 of article 5, last part.

This provision has in view to establish a general punishment measure and a heavier punishment taking into account the purpose of trafficking. It is proposed that the measure be the maximum provided for in the penal law in cases in which trafficking results in the death of the victim.

1. Any person who takes a minor of less than 18 years away from his or her procreators, school or any other place, or from somebody in charge of his or her safekeeping, for the purposes provided for in article 1 of this law commits the crime of trafficking in persons, punished with an 8 to 12 year long-term prison sentence.

2. Under this law fraudulent removal of minors shall mean the offering of presents or making promises, true or false, with the intention to seduce minors less than 18 years old for trafficking<sup>11</sup>.

#### **Article 14** **(Use of a false name or a false quality)**

Any person who, using a false name or false quality, recruits or orders the recruitment of persons for work, sexual, or any other kind of exploitation within the country or abroad will be punished with a 2 to 8 year long-term prison sentence.

#### **Article 15** **(Use of a false document)**

Any person who uses a false document for trafficking in persons will be punished with a short or long-term prison sentence deserved by a forger, but never less than half its maximum duration.

#### **Article 16** **(Private imprisonment for or during trafficking)**

Any person who holds somebody captive for up to 24 hours, depriving him or her from liberty, whether in a house or in any other place, with the purpose to facilitate his or her transport for trafficking, will be punished with an 8 to 12 year long-term prison sentence<sup>12</sup>.

#### **Article 17** **(Threat of the use of force)**

---

<sup>11</sup> The provision here proposed is in conformity with paragraph c) of article 3 of the Protocol. The age of 18 years is proposed as a special circumstance, considering that the International Convention of the Rights of the Child, as well as the Protocol itself define a child as any person aged less than 18 years.

<sup>12</sup> Although Article 330 of the Penal Code refers to private imprisonment, there is a variety of situations and it was our intention to aggravate the applicable abstract punishment measure to the confluence of crimes. In this case, imprisonment is accompanied by a specific premeditation, towards a certain purpose.

1. Threats of any nature or the use of force to compel others to undue obedience in trafficking will be punished with a 2 to 8 year prison sentence, if no heavier punishment is due and if the crime has not been committed.

2. In general, an 8 to 12 year long-term prison sentence will be imposed to all those who through the means referred to in this article have committed the crime.

**Article 18**  
**(Assistance to illegal emigration and trafficking in persons)**

1. Any assistance to illegal emigration given by somebody to other people for the purpose of trafficking will be punished with a 2 to 8 year long-term prison sentence.

2. Simple assistance to illegal emigration, for other purposes different from the ones provided for in this law is not considered trafficking in persons.

**Article 19**  
**(Irrelevance of the victim's consent)**

The consent of the victim is irrelevant and does not remove neither attenuate the penal responsibility of the perpetrators of the crimes provided for in this law.

**(SECTION III)**

**Victims and witnesses**

**Article 20**  
**(Victims and witnesses)**

1. The victims of the crimes provided for in this law benefit from the general witness protection measures in penal proceedings and, especially, the possibility of not having revealed their identity in the course of the preliminary inquiry of the criminal case.
2. Through a judicial decision, the victims, witnesses and their relatives may benefit from police protection.

**Article 21**  
**(Protection of the victim)**

1. Any person whose physical, psychological, economic, material or social vulnerability is being exploited and abused, believing that he or she has no

other alternative than to submit him or herself to exploitation, with the aim to improve his or her social condition, may benefit from special protection in the following cases:

- a) The person entered illegally in a foreign country, with or without the legally required documents;
  - b) The person is pregnant, as a consequence of trafficking;
  - c) The person is in some way disabled;
  - d) The person is a minor;
  - e) The person practices prostitution, resulting from trafficking.
3. The victims of the crime of trafficking are only criminally liable for the offences they have committed through the crime free from coercion.

## **Article 23**

### **(Obligation of denouncement)**

1. Any migration official, customs agent or border police, medical doctor or health agent and any public servant who has knowledge that a certain person is victim of the crime of trafficking has a special obligation to denounce the fact to the competent authorities.
2. The police authorities, who have knowledge by themselves or through a denouncement, should start the necessary inquiries to hold the offenders liable.

## **SECTION IV**

### **(Final and temporary provisions)**

## **Article 21**

### **(Revocation norm)**

All legislation contrary to this law is revoked.

## **(Article 22)**

### **Supporting legislation**

The provisions of the Penal Code and pertinent complementary legislation are additionally applicable to the crimes provided for in this law.